

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA,
Roanoke Division

MARLON CANADY
Plaintiff,

V. Case No. 7:17 CV 464

M. HODGES, et al,
Defendants

CLERK'S OFFICE U.S. DIST. COURT
AT ROANOKE, VA
FILED

AUG 04 2021

JULIA C. DUDLEY, CLERK
BY: A. Beeson
DEPUTY CLERK

MOTION REQUEST FOR APPOINTMENT OF
COUNSEL

Plaintiff, Marlon Canady, is a Virginia inmate, proceeding pro se, and has filed this civil rights action pursuant to 42 U.S.C. § 1983. The plaintiff has presented two claims seeking declaratory relief, preliminary and permanent injunctive relief, compensatory and punitive damages based on the unnecessary use of excessive force,
(1)

and the denial of adequate medical treatment. After the parties engaged in discovery and briefed the issues, the court denied summary judgment as to certain excessive force, and deliberate indifference claims regarding the incident on June 25, 2015, asserting that:

(a) defendant Bostic sprayed Canady multiple times with pepper spray after the fighting stopped,

(b) defendant Barbetto engaged his canine two times after plaintiff was already on the floor, and disengaged in the fighting as ordered,

(c) defendant Whited failed to provide prompt adequate medical care for plaintiff's serious medical needs

This matter is scheduled for a jury trial on August 30-31, 2021.

It was Adjudged and Ordered by the District Court (ECF No. 97) that the defendants respond to Canady's request for additional video footage, and that the defendants produce any documents in which a VDOC, or other governmental administrative disciplinary body made a finding that either correctional officer, Bostic and Barbetto, used excessive force against an inmate on a particular occasion while employed by the VDOC. Given the interests of justice, this Court invites (ECF No. 107) the Plaintiff to file this motion for the Court's assistance in securing counsel to represent Plaintiff in this matter.

In support of this Motion Request, pursuant to 28 U.S.C. § 1915 (e)(1), for appointment of counsel, the Plaintiff states the following:

1. The Plaintiff is unable to afford counsel, and was granted leave to

proceed in forma pauperis on December 12, 2017,

2. The issues involved in this case are complex, and may require eye-witnesses testimonies

3. Plaintiff is unable to communicate with inmate eye-witnesses, however, through a third party, an eye-witness has been located, but he fears retaliation from prison officials at Keen Mountain Correctional Center.

4. The defendants are still concealing evidence, "video footage, informal complaints, and grievances filed against the defendants by inmates and staff.

5. The plaintiff is an inmate housed in the Va. Dep't of Corr. prison, and his imprisonment has limited, and hindered his ability to litigate, and do adequate research (covid 19 lock down), and to respond to court orders in a timely

manner. Prison officials at current location, Greenville Correctional Center, delay and hold legal mail seven (7) to forty one (41) days before delivering the legal mail to the inmates. (see Written Complaints, and Grievances enclosed).

6. The plaintiff is not in good health at this time, and the prison is denying and delaying to provide medical treatment.

Request for medical treatment and Emergency Grievance submitted, and ignored. Plaintiff suffers from Plantar Fasciitis, Heel Spurs, and a hemorrhoidal condition. (see Enclosed Emergency Grievances).

7. Due to the extremely short notice in the Court's (ECF No. 107) order in which Plaintiff did not receive until July 28, 2021, plaintiff is un-able to provide this court with copies of the last twelve (12) monthly financial statements.

8. At the present time, plaintiff's spend account balance is \$ 292.38.

9. Plaintiff do not own any real estate, stocks, bonds, notes, automobiles, boats, or any other valuable property.

10. Enclosed, Plaintiff has provided monthly Trust Statements, from February 1, 2021, to June 1, 2021, (All that he has) of his prison's spend account

11. To the best of Plaintiff's Knowledge, he does not owe any debts excepts court fines in the State of Virginia.

12. Plaintiff is indigent, and can't afford the cost of an attorney, but has made efforts to request services of an attorney.

13. Attorney Matthew J. Weinberg,
Inman & Strickler, PLC
575 Lynnhaven Parkway, Suite 200
Virginia Beach, Virginia, 23452-7350
Phone (757) 486-7055, has shown

some interest in the case, but has asserted that he wishes to view the CD of the video footage dated June 25, 2015, before making decision to represent Plaintiff at August 30, 31, 2021 jury trial. Plaintiff request that this court in effort to encourage attorney Weinberg to represent the Plaintiff at trial, order that defendant's attorney, "Richard C. Vorhis", release a copy of June 25, 2015, video footage to attorney Matthew J. Weinberg.

14. In the event that the Plaintiff is awarded damages, a money award, the plaintiff is willing to split a percentage of the award with the attorney appointed to represent him.

15. This request is made in good faith, and in the interest of justice.

WHEREFORE, CANADY respectfully requests that this Court GRANT his Motion for Appointment of Counsel in this matter.

Respectfully Submitted By
MARLON CANADY # 1110773

Marlon Canady, pro se
Greensville Correctional Center
901 Corrections Way

S-1, HU-2-214

Jarratt, Virginia, 23870

Date: July 30, 2021

CERTIFICATE OF SERVICE

I, Marlon Canady, hereby certify or declare under penalty of perjury that the above information is true, and correct, and also declare under penalty of perjury that on this ~~July~~ 30 day of July 2021, a copy of the forgoing, Plaintiff's Motion for Appointment of Counsel was placed in the prison's mail-box to be mailed, by U.S. Postal Services to the Clerk's office of the United States District Court for the Western District of Virginia, 210 Franklin Rd. Rm. 540, Roanoke, Virginia 24011.

Due to short notice, and response time, the Plaintiff is unable to provide copies of this Motion For Appointment of Counsel to the Defendant's Attorneys:

Richard C. Vorhis
Senior Assistant Attorney General
Criminal Justice & Public Safety
Division, Office of the Attorney General,
202 North Ninth Street
Richmond, Virginia 23219, and

Nathan H. Schnetzler
Frith Anderson + Peake, P.C.
29 Franklin Road, S.W.
P.O. Box 1240
Roanoke, Virginia, 24006-1240

Plaintiff respectfully request the clerk of this court to provide a copy of this Motion to each attorney.

Marlon Canady

Marlon Canady #110773
Greensville Correctional Center
901 Corrections Way
S-1, HU-2-214
Jarratt VA. 23870

Clerk's office
United States
for the West
210 Franklin
Roanoke, Virg

Legal Mail



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